EXHIBIT I

V I R G I N I A:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

JOHN L. MCGILL,

Plaintiff,

v. AT LAW No: LC-1553-3

MINNESOTA MUTUAL LIFE INSURANCE COMPANY,
a Minnesota corporation

SERVE: R. Harvey Chappell, Jr., Esq., Registered Agent
Christian, Barton, Epps, Brent & Chappell
Suite 1200, Mutual Building
909 East Main Street
Richmond, Virginia 23219

and

J. MICHAEL JOHNSON, individually and t/a
J. MICHAEL JOHNSON & ASSOCIATES

SERVE AT: 2008 Libbie Avenue, Suite 101
Richmond, Virginia 23226

Defendants.

MOTION FOR JUDGMENT

COMES NOW the Plaintiff, John L. McGill (hereinafter "McGill"), by counsel, and for his Motion for Judgment against the Defendants, Minnesota Mutual Life Insurance Company, a Minnesota corporation (hereinafter "Minnesota Mutual"), and J. Michael Johnson, individually and t/a J. Michael Johnson & Associates, (hereinafter "Johnson"), states the following, to-wit:

PARTIES

1. McGill is an adult individual and a citizen of the State of New York who currently resides at 855 Forest Avenue, Fulton, New York 13069.

2. Minnesota Mutual Life Insurance Company ("Minnesota Mutual") is a Minnesota corporation, having its principal place of business at 400 North Robert Street, St. Paul, Minnesota. Minnesota Mutual is a foreign corporation registered with the State Corporation Commission of Virginia, is authorized to do business in the Commonwealth of Virginia, and maintains its registered office and regularly conducts affairs or substantial business activity in the City of Richmond, Virginia, both directly and through its authorized agents, including Johnson.

3. J. Michael Johnson, individually and trading as J. Michael Johnson & Associates, who maintains his principal place of business at 2008 Libbie Avenue, Suite 101, Richmond, Virginia, is an insurance agent licensed to do business under the laws of the Commonwealth of Virginia, regularly conducts affairs or substantial business activities in the City of Richmond, Virginia, is a general insurance agent and an authorized agent of Minnesota Mutual, and has earned the credential of Certified Life Underwriter ("CLU"), a professional designation indicating Johnson possesses, by qualification, higher than ordinary levels of training, experience, competence and expertise in insurance matters.

GENERAL FACTS

4. In the spring of 1992, Johnson contacted McGill, at the request of McGill's employer, Eastern Shore Printing Company, Inc. (whose name has since been changed to The Interflex Company, Inc.), a Virginia Corporation at which McGill was then employed as Vice President, for purposes of discussing supplemental "Key Man" long-term disability coverage. This coverage was intended to supplement an existing group long-term disability policy. That group policy provided coverage until age 65. The Key Man coverage was to be a full, replacement of McGill's salary until age 65.

5. The long-term disability coverage benefits Johnson discussed with McGill were to provide, in the event of McGill's permanent or long-term disability, coverage in the amount of $3,400.00 per month from the date of the covered long-term disability, after the requisite waiting period, until McGill's 65th birthday.

6. It was Johnson's duty to select, broker and provide the long-term disability insurance policy for McGill, and, in early May of 1992, Johnson contacted McGill to schedule the presentation of a proposal from an insurance carrier selected by Johnson, to provide the supplemented long-term disability insurance for McGill, in accord with the terms McGill's employer had requested.

7. Upon information and belief, Johnson was at approximately the same time also making a similar or identical proposal to provide supplemental Key Man disability coverage in the same or

similar amount for Mr. Joseph Doyle, President and owner of Eastern Shore.

8. On or about May 12, 1992, Johnson met in person with McGill and presented a term sheet (the "Proposal") for long-term disability insurance to McGill, which Johnson had obtained from Minnesota Mutual as its authorized agent. A true and correct copy of the Proposal is attached hereto as Exhibit A.

9. The Proposal represented, among other statements, that the coverage offered would provide McGill, in the event of a covered disability, $3,400.00 per month in long-term disability benefit payments from 90 days after the date of a covered disability until age 65, plus inflation adjusted increases each succeeding year during the coverage period after the commencement of a covered disability. The Proposal also provided for a waiver of premium payments by Minnesota Mutual in the event McGill suffered a covered disability.

10. In reliance upon the representations in the Proposal prepared and presented by Minnesota Mutual and Johnson, McGill accepted the long-term disability policy proposal on the terms offered.

11. At the May 12, 1992 meeting, McGill confirmed his acceptance of the Proposal by completing and signing, as requested by Johnson, the disability policy application of Minnesota Mutual (the "Application") provided him by Johnson, and Eastern Shore remitted a check to Johnson in payment of the amount Johnson quoted as first month's premium due under the Policy. Policy premiums

were thereafter paid by McGill and/or Eastern Shore every successive month until three months after McGill's disability commenced in November, 1995, when the waiver of premiums clause took effect.

12. In June, 1992, as instructed by Johnson, McGill presented himself for a physical examination for the Policy conducted by a nurse employed by Minnesota Mutual and Johnson.

13. On July 2, 1992, Minnesota Mutual issued the Policy providing for the payment of disability benefits to McGill in the event he suffered a covered disability. However, the coverage provided for in the Policy, as written, did not conform to the terms of the Proposal Minnesota Mutual and Johnson made to McGill and McGill had accepted; instead, the Policy as written provided materially and substantially less coverage than what had been offered to and accepted by McGill on May 12, 1992, in that it limited the disability benefit payment period to a maximum duration of five years or until McGill's 65th birthday, if earlier. The Policy as written also increased the monthly premium charge for the lesser coverage it provided by approximately $25.00 per month.

14. The Policy as written is contained in a bound folder. Included in this bound folder is a copy of McGill's signed application accepting the terms of the original Proposal. The folder in which the Policy and McGill's application are bound also contains a new term sheet which is inserted, unbound, in the back of the folder. This term sheet materially changes the terms of McGill's coverage in that it reduces the benefit period to a

maximum of five years, while the original term sheet specifies a benefit period to age 65. This term sheet was never presented to McGill for his authorization, approval or consent prior to the issuance of the Policy, and both the Policy and the altered term sheet were withheld from McGill after the Policy was issued.

15. Neither Minnesota Mutual nor Johnson mailed or delivered the Policy to McGill, nor did they inform or notify him in any manner of the materially reduced long-term disability coverage to be provided by the Policy, as written and issued on July 2, 1992; likewise, McGill was never asked by Minnesota Mutual or Johnson to sign an amended application, and McGill would have refused to do so had he been duly asked, since it provided substantially less coverage than what he had contracted for.

16. Instead of forwarding McGill the Policy as written, and of duly informing him of the material alterations and discrepancies between the coverage it provided for as written and the coverage he had contracted for as stated in the Proposal, and of seeking and obtaining McGill's approval, Johnson, as Minnesota Mutual's authorized agent, called McGill by telephone in mid-July, 1992 and notified McGill simply that the Policy had been issued by Minnesota Mutual "without a hitch," and further informed him in passing merely that Minnesota Mutual would be charging a slightly higher monthly premium of approximately $25.00 per month more than Johnson originally quoted when the Proposal was presented to McGill and he accepted it.

17. In the aforesaid telephone conversation, Johnson explained the slightly higher premium was being charged by Minnesota Mutual because McGill's physical examination indicated he was slightly overweight for his height and his blood pressure was slightly elevated on the day of the exam. Nevertheless, Johnson assured McGill that the Policy as written provided the same coverage he had requested and contracted for as set forth in the Proposal and in his signed application.

18. McGill consented to the higher premium amount of which he was informed by Johnson, not regarding the increase as material to the coverage and having no idea and no way of knowing from the information given him that for a higher monthly premium Minnesota Mutual and Johnson were purveying to him substantially less coverage in the Policy, as written, than what McGill had previously been offered and had accepted.

19. On July 21, 1992 Minnesota Mutual purportedly wrote a letter to McGill informing him that the Company had decided to issue him a policy of disability insurance. The letter states among other things, "...it was necessary to make some changes to the policy we are offering." A true and correct copy of the aforesaid letter is attached hereto as Exhibit B (hereinafter the "7/21/92 letter").

20. McGill did not receive a copy of the aforesaid 7/21/92 letter until May, 1996, nearly four years after the letter had allegedly been written and the Policy had been issued, and more than six months after McGill had become permanently disabled.

21. Even if the 7/21/92 letter had been timely received by McGill, its contents would not have informed him of the materially reduced coverage period provided in the Policy, as written, as the letter contained no information so stating, and McGill would have reasonably believed, based on the telephone notification from Johnson, that the unspecified "changes" mentioned in the letter referred merely to the increased monthly premiums of which Johnson informed him in mid-July, 1992, to which he had already consented.

22. Minnesota Mutual and Johnson knew, but failed to disclose to McGill, that the duration of the long-term disability benefit coverage period, as written in the Policy, would be for a maximum of only five years commencing after a covered disability occurred.

23. Minnesota Mutual and Johnson knew or should have known that the duration of long-term disability benefits coverage period under the Policy was a material and essential concern to McGill, and a material and essential element of the insurance contract for which McGill had bargained and contracted to purchase from them.

24. Minnesota Mutual and Johnson, whether or not intentionally, conspired together to conceal from McGill the fact that the long-term disability benefits coverage period provided in the Policy, as written, was limited to a maximum of five years, and misled McGill to believe the Policy as written provided the same coverage term as the coverage set forth in the Proposal McGill had been offered and accepted.

25. Beginning July 2, 1993, the anniversary date of the Policy, and on every successive anniversary date of the Policy

thereafter until July 2, 1996, Minnesota Mutual forwarded an "Annual Policy Review" to McGill. True and correct copies of the "Annual Policy Review" for each of these years, respectively, are attached hereto as Exhibits C, D, E, & F.

26. Each of the aforesaid Annual Policy Reviews states, among other things, "Your coverage cannot be cancelled as long as you continue paying premiums."

27. Each of the aforesaid Annual Policy Reviews also states that the Policy provides a monthly disability benefit amount of $3,400.00, in conformity with the monthly benefit amount for which McGill bargained, contracted for, had been offered and had accepted as provided in the Proposal.

28. None of the Annual Policy Reviews states that the duration of the long-term disability benefit payments provided under the Policy, as written, is limited to five years, or contains any information by which McGill would be notified that the Policy, as written, provides materially less coverage than the coverage terms for which McGill had bargained and contracted for, had been offered and had accepted as provided in the Proposal.

29. McGill reasonably relied on Johnson's confirmation in mid-July, 1992 that Minnesota Mutual had issued the Policy in conformity with the coverage terms McGill had bargained and contracted for, had been offered and had accepted as provided in the Proposal of May 12, 1992.

30. In January 1994, resulting from the solicitation of Johnson and Minnesota Mutual, McGill applied for and acquired from

Johnson and Minnesota Mutual a $350,000 life insurance policy on his own life, which policy was issued after McGill had first undergone a similar or identical physical exam to that administered prior to the issuance of the long-term disability Policy in controversy herein. To the best of McGill's knowledge, information and belief, the aforesaid life insurance policy was issued without limitation based on McGill's physical examination and on standard premium rates.

31. In April, 1994, McGill was diagnosed with severe obstructive sleep apnea. By November, 1995, McGill's apnea had progressed to the extent that it rendered McGill disabled and incapacitated him from continuing to work at his occupation, and qualified him for the long-term disability benefits provided for in the Policy.

32. McGill duly filed for disability benefits with Minnesota Mutual through Johnson, and, thereafter, began receiving the $3,400.00 monthly benefit payments from Minnesota Mutual. Although McGill had never been furnished with or seen the Policy, he reasonably believed, based on the information he had been given by Minnesota Mutual and Johnson, as recited above, that his disability benefit payments under the Policy would continue monthly until his 65th birthday.

33. McGill's date of birth is July 2, 1947, and he was 48 years old when he became permanently disabled.

34. In May, 1996, while calling Minnesota Mutual to inquire about the inflation protection clause referred to in the Annual

Policy Reviews he had received, McGill was informed for the first time that the Policy, as amended, provided for disability benefit payments for a maximum term of only five years, not until age 65 as he had been offered in the Proposal and had accepted.

35. Prior to being so informed in May, 1996, McGill had no knowledge whatsoever that the benefit payment term provided for in the Policy, as written, did not conform to the terms of the Proposal he had been offered and had accepted, but had been materially altered so as to provide substantially less coverage.

36. Minnesota Mutual and Johnson materially altered the Policy's coverage terms to the detriment of McGill without McGill's knowledge, consent or authority, and without notice or disclosure thereof to McGill.

37. McGill has demanded payment from the Defendants for the value of the disability benefit coverage extending until his 65th birthday, but the Defendants have failed and refused to pay the same.

38. As a result of the five year limitation on the benefit payment term provided for in the Policy as written, McGill will receive the combined sum of $671,260.04 less in monthly long-term disability payments than he should have and would have received had the Policy conformed to the terms set forth in the Proposal offered to him and accepted by him, the present value of which, discounted at a 6% capitalization rate, is $497,117.10.

COUNT I - BREACH OF CONTRACT

39. McGill repleads and realleges all of the allegations contained in paragraphs 1 through 38 as if fully set forth herein.

40. The offer of Minnesota Mutual and Johnson to provide McGill long-term disability insurance as stated in the Proposal, and McGill's acceptance thereof on or about May 12, 1992, constitutes a completed contract (the "contract") between McGill and the Defendants.

41. Despite the fact that the Policy was not furnished to McGill prior to his becoming permanently disabled, its existence on the coverage terms agreed as of May 12, 1992 was repeatedly confirmed to him through the numerous communications from Minnesota Mutual and Johnson set forth herein.

42. In reasonable, good faith and detrimental reliance on the contract, McGill relinquished his right to seek other coverage in substitution of the coverage stated in the Proposal which he was offered by the Defendants and accepted, and McGill's premiums were paid monthly in further reliance on the contract.

43. McGill, having reasonably relied on the contract to his detriment, can no longer obtain substitute coverage because, being permanently disabled, he is now uninsurable.

44. Minnesota Mutual and Johnson breached the contract with McGill by materially altering the agreed terms of the Policy without McGill's knowledge, consent or authority in its issuance of a Policy which did not conform to the terms of the contract, and

which provided substantially less coverage than required by the contract.

45. Minnesota Mutual and Johnson concealed their breach of the contract from McGill by failing to furnish him with the Policy as written and by misleading and misinforming him as to the coverage provided in the Policy as written.

46. As a direct and proximate result of Minnesota Mutual's and Johnson's breach of contract as aforesaid, McGill has suffered monetary damages having a present value of $497,117.10, all of which he is entitled to recover from Minnesota Mutual and Johnson, jointly and severally.

47. Minnesota Mutual and Johnson have failed and refused to compensate McGill for the damages caused to him by their breach of contract despite due demand.

WHEREFORE, McGill demands judgment against Minnesota Mutual and Johnson, jointly and severally, in the amount of $497,117.10, plus interest thereon at the applicable statutory rate from and after May 15, 1996, together with the costs of this proceeding.

COUNT II - FRAUD

48. McGill repleads and realleges all of the allegations contained in paragraphs 1 through 47 as if fully set forth herein.

49. Minnesota Mutual's and Johnson's acts and conduct aforesaid, including, without limitation, sleight of hand, concealment of material facts and information, dissemination of misleading information, and the material alteration of the coverage terms in the Policy, as written, so as not to conform with the

terms agreed and contracted for as stated in the Proposal, without the knowledge, consent, or authority of McGill, constitute actual or constructive fraud upon McGill, in that McGill was thereby induced to enter into the contract of disability insurance on the coverage terms stated in the Proposal, to reasonably rely in good faith, to his detriment, that the Policy as written provided the same coverage terms stated in the Proposal, to cause the premiums to be paid on the Policy, and to relinquish his right to obtain substitute disability insurance coverage in conformity with the contract at a time when he was not incapacitated and able to do so.

50. As a direct and proximate result of Minnesota Mutual's and Johnson's actual or constructive fraud as aforesaid, McGill has suffered compensable monetary damages having a present value of $497,117.10, all of which he is entitled to recover from Minnesota Mutual and Johnson, jointly and severally.

51. Minnesota Mutual and Johnson have failed and refused to compensate McGill for the damages caused to him by their fraudulent acts and conduct despite due demand.

52. In addition to recovering his compensatory damages, McGill is also entitled to an award of punitive damages against Minnesota Mutual and Johnson by reason of their fraud herein.

WHEREFORE, McGill demands judgment against Minnesota Mutual and Johnson, jointly and severally, for compensatory damages in the amount of $497,117.10, plus interest thereon at the applicable statutory rate from and after May 15, 1996, together with the costs of this proceeding, and for punitive damages in the amount of $1,000,000, plus interest thereon from the date of judgment.

COUNT III - BREACH OF FIDUCIARY DUTY

53. McGill repleads and realleges all of the allegations contained in paragraphs 1 through 52 as if fully set forth herein.

54. McGill duly entrusted the handling of his disability insurance request and the contract to provide the coverage he requested in accord with the Proposal to Minnesota Mutual and Johnson.

55. Minnesota Mutual and Johnson are and have been serving at all times germane to the controversy herein as fiduciaries for McGill with respect to the disability insurance coverage requested by him, offered to him through the Proposal and accepted by him, the writing and issuance of the Policy, and the disclosure or lack thereof to McGill of the coverage terms provided in the Policy as written and other information provided McGill about the Policy upon which the Defendants intended McGill to rely.

56. Minnesota Mutual and Johnson, as fiduciaries, have at all times herein owed McGill a fiduciary duty of timely and full disclosure with respect to all material facts and matters pertaining to their contract to provide him disability insurance coverage in conformity with the Proposal.

57. Minnesota Mutual and Johnson, as fiduciaries, have at all times herein owed McGill a fiduciary duty of fair dealing with respect to all material facts and matters in their contract to

58. Minnesota Mutual and Johnson have, by their acts and conduct set forth herein, breached their aforesaid fiduciary duties to McGill.

59. As a direct and proximate result of Minnesota Mutual's and Johnson's breach of their fiduciary duties, McGill has suffered compensable monetary damages having a present value of $497,117.10, all of which he is entitled to recover from Minnesota Mutual and Johnson, jointly and severally.

60. Minnesota Mutual and Johnson have failed and refused to compensate McGill for the damages caused to him by their breach of fiduciary duties despite due demand.

61. In addition to recovering his compensatory damages, McGill is also entitled to an award of punitive damages against Minnesota Mutual and Johnson by reason of their breach of fiduciary duties herein.

WHEREFORE, McGill demands judgment against Minnesota Mutual and Johnson, jointly and severally, for compensatory damages in the amount of $497,117.10, plus interest thereon at the applicable statutory rate from and after May 15, 1996, together with the costs of this proceeding, and for punitive damages in the amount of $1,000,000, plus interest thereon from the date of judgment.

TRIAL BY JURY IS DEMANDED ON ALL ISSUES JOINED HEREIN.

JOHN L. MCGILL

By: ________________________
Of Counsel

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AFFIDAVIT

The undersigned affiant, John L. McGill, after first being duly sworn, hereby makes oath as follows:

1. That I am the Plaintiff named in the above Motion for Judgment styled John L. McGill v. Minnesota Mutual Life Insurance Company and J. Michael Johnson.

2. That the facts alleged in said Motion for Judgment are true and accurate to the best of my knowledge, information and belief.

John L. McGill

JOHN L. MCGILL

STATE OF VIRGINIA
COUNTY/~~CITY OF~~ Henrico, to-wit:

The foregoing instrument was acknowledged before me this 23rd day of June, 1997, by John M. McGill.

Cheryl W. Henderson

Notary Public

My commission expires: May 31, 1998